

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

REBECCA STARR-CRIPE,)
) No. CV-04-354-MWL
Plaintiff,)
) ORDER GRANTING DEFENDANT'S
v.) MOTION FOR SUMMARY JUDGMENT
)
JO ANNE B. BARNHART,)
)
Commissioner of Social)
Security,)
)
Defendant.)
)

BEFORE THE COURT are cross-Motions for Summary Judgment,
noted for hearing with oral argument on June 17, 2005. (Ct. Rec.
9, 12.) Attorney James T. Solan represents Plaintiff; Special
Assistant United States Attorney David R. Johnson represents
Defendant. The parties have consented to proceed before a
magistrate judge. (Ct. Rec. 4.) After reviewing the
administrative record and the briefs filed by the parties, the
court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 12)

1 and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 9).

2 Plaintiff protectively applied for Social Security Income and
3 Disability Insurance Benefits on September 28, 2000, alleging an
4 onset date of January 3, 2000. (Tr. 17; 75.) Benefits were denied
5 as was reconsideration. A request for hearing was timely filed.
6 Hearings were held August 29, 2000; December 17, 2002 and February
7 25, 2003. (Tr. 17.) On June 6, 2003, the Administrative Law Judge
8 (hereinafter, "ALJ,") Richard Hines denied benefits. (Tr. 26.) The
9 Appeals Council considered additional evidence and then denied
10 review. The instant matter is before this court pursuant to 42
11 U.S.C. § 405(g).

12 ADMINISTRATIVE DECISION

13 The ALJ found Plaintiff had not engaged in substantial
14 gainful activity during the period at issue. (Tr. 18.) Plaintiff
15 suffers from the severe impairment of a closed fracture of the
16 lower extremity with subsequent difficulty involving malunion
17 deformities which required corrective osteotomy, an impairment
18 meeting a Listed impairment for the closed period of January 3,
19 2000 through January 11, 2001 (Tr. 20; 25). (The ALJ's finding of
20 disability for this closed period is not part of this appeal.) The
21 ALJ found that plaintiff has been diagnosed with and treated for a
22 depressive disorder, post-traumatic stress disorder ("PTSD"),
23 dissociative disorder, and substance abuse. (Tr. 25.) The ALJ
24 found that plaintiff's mental impairments cause at most moderate
25 limitations for only superficial contact with the public and no
26 concentrated and continuous interaction with co-workers. (Tr. 23.)
27 The ALJ found that plaintiff retained the residual functional
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1 capacity for medium work. (Tr. 22.) He determined that she could
2 return to her past relevant work. (Tr. 26.) Alternatively, the ALJ
3 found that there are a significant number of other jobs plaintiff
4 can perform. (Id.) The ALJ found the Plaintiff was not disabled.

5 STANDARD OF REVIEW

6 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001)
7 the court set out the standard of review:

8 A district court's order upholding the
9 Commissioner's denial of benefits is reviewed de novo.
10 *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000).
11 The decision of the Commissioner may be reversed only if
12 it is not supported by substantial evidence or if it is
13 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,
14 1097 (9th Cir. 1999). Substantial evidence is defined as
15 being more than a mere scintilla, but less than a
16 preponderance. *Id.* at 1098. Put another way, substantial
17 evidence is such relevant evidence as a reasonable mind
18 might accept as adequate to support a conclusion.
19 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the
20 evidence is susceptible to more than one rational
21 interpretation, the court may not substitute its
22 judgment for that of the Commissioner. *Tackett*, 180 F.3d
23 at 1097; *Morgan v. Commissioner*, 169 F.3d 595, 599 (9th
24 Cir. 1999).

25 The ALJ is responsible for determining credibility,
26 resolving conflicts in medical testimony, and resolving
27 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
28 Cir. 1995). The ALJ's determinations of law are
reviewed *de novo*, although deference is owed to a
reasonable construction of the applicable statutes.
McNatt v. Apfel, 201 F.3d 1084, 1087 (9th Cir. 2000).

21 SEQUENTIAL PROCESS

22 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the
23 requirements necessary to establish disability:

24 Under the Social Security Act, individuals who are
25 "under a disability" are eligible to receive benefits.
26 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as
27 "any medically determinable physical or mental
28 impairment" which prevents one from engaging "in any
substantial gainful activity" and is expected to result
in death or last "for a continuous period of not less
than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an
impairment must result from "anatomical, physiological,

1 or psychological abnormalities which are demonstrable by
2 medically acceptable clinical and laboratory diagnostic
3 techniques." 42 U.S.C. § 423(d)(3). The Act also
4 provides that a claimant will be eligible for benefits
5 only if his impairments "are of such severity that he is
6 not only unable to do his previous work but cannot,
7 considering his age, education and work experience,
8 engage in any other kind of substantial gainful work
9 which exists in the national economy...." 42 U.S.C. §
10 423(d)(2)(A). Thus, the definition of disability
11 consists of both medical and vocational components.

12 In evaluating whether a claimant suffers from a
13 disability, an ALJ must apply a five-step sequential
14 inquiry addressing both components of the definition,
15 until a question is answered affirmatively or negatively
16 in such a way that an ultimate determination can be
17 made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The
18 claimant bears the burden of proving that [s]he is
19 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
20 Cir. 1999). This requires the presentation of "complete
21 and detailed objective medical reports of h[is]
22 condition from licensed medical professionals." *Id.*
23 (citing 20 C.F.R. §§ 404.1512(a)-(b), 404.1513(d)).

24 ISSUES

25 The question presented is whether there was substantial
26 evidence to support the ALJ's decision to deny benefits and, if
27 so, whether that decision was based on proper legal standards.
28 Plaintiff asserts that the ALJ erred when he weighed the medical
evidence and assessed her credibility. (Ct. Rec. 10 at 10; 18; 22-
23.) The Commissioner responds that the ALJ's findings should be
affirmed because they are supported by substantial evidence and
are free of legal error. (Ct. Rec. 13 at 8; 15.)

29 ADMINISTRATIVE HEARING

30 Plaintiff was 42 years old at the time of the decision. (Tr.
31 18.) She earned a GED. (Tr. 477.) Plaintiff has worked as a data
32 entry clerk, an assembly mechanic, a gas station attendant, and an
33 office assistant. (Tr. 515.)

34 Plaintiff lives alone. (Tr. 477.) Her activities included

1 traveling by bus from Spokane to Everett in the summer of 2002 to
2 care for a grandchild for a month. (Tr. 22; 500.) She cooks,
3 cleans, does crafts, walks to the store, and watches
4 television.(Tr. 500; 485-87; 497.) A close friend testified that
5 she goes camping with the plaintiff two or three times yearly.
6 (Tr. 509.)

7 ANALYSIS

8 1. Weighing the Medical Evidence

9 Plaintiff alleges that the ALJ erred by failing to credit the
10 opinion of treating physician Pamela Ridgway, Ph.D. (Ct. Rec. 10 at
11 11.) At oral argument plaintiff conceded that the ALJ gave specific
12 reasons for discrediting Dr. Ridgway's opinion but argued that the
13 reasons are not convincing. The Commissioner asserted that the ALJ's
14 rejection of some of the assessed limitations is supported by
15 specific reasons based on substantial evidence in the record. The
16 record includes evidence from other treating and examining
17 physicians that plaintiff's mental impairments did not result in
18 significant psychological difficulties when she followed her
19 medication regime. (Ct. Rec. 13 at 9-10.) The ALJ relied on these
20 physicians' opinions in addition to the testimony of the testifying
21 medical expert.

22 For reasons unclear to the court, the parties and the ALJ refer
23 to Dr. Ridgway as a treating physician. The record reveals that Dr.
24 Ridgway performed two evaluations at the request of DSHS, on
25 January 9, 2001 (Tr. 140); and on August 13, 2002 (Tr. 289). She
26 performed a post-hearing evaluation on July 12, 2004 (Tr 449). Even
27 applying, as the ALJ did, the higher deference owed to a treating
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1 physician, the record supports the ALJ's evaluation of Dr. Ridgway's
2 opinions.

3 Dr. Ridgway first evaluated the plaintiff on January 9, 2001.
4 (Tr. 140.) She diagnosed a history of polysubstance abuse in
5 sustained full remission, post-traumatic stress disorder,
6 dissociative disorder, NOS, and rule out psychotic disorder, NOS.
7 (Tr. 141.) Dr. Ridgway assessed marked limitations in the ability to
8 perform routine tasks, and in the ability to respond appropriately
9 to and tolerate the pressures and expectations of a normal work
10 setting. (Tr. 142.) She noted that plaintiff recently resumed taking
11 paxil after not taking it for a year because she lacked insurance
12 and money. (Id.) Dr. Ridgway opined that mental health intervention
13 would likely restore or substantially improve plaintiff's ability to
14 work. (Tr. 143.)

15 Dr. Ridgway evaluated plaintiff a second time on August 13,
16 2002. (Tr. 289.) She opined that plaintiff's negative test results
17 are often associated with a "a cry for help" or with an extremely
18 negative self-evaluation. (Tr. 292.) Dr. Ridgway described
19 plaintiff's results on the MCMI as "valid results that likely
20 involve some elements of symptom exaggeration, "a cry for help,"
21 and/or acute emotional turmoil. (Tr. 293.) With respect to the MMPI-
22 2, Dr. Ridgway again found that the results likely involve some
23 symptom exaggeration and/or a cry for help. She opined that these
24 results can be considered "likely valid." (Id.) Dr. Ridgway noted
25 that much of the objective testing "was equivocally valid due to
26 Becky's apparent over-endorsement of problem areas," but noted that
27 her overall responses are quite consistent. (Tr. 295.) She assessed

1 a GAF of 50 and gave a "quite guarded" prognosis. (Tr. 294-95.)

2 Dr. Ridgway's last evaluation is entitled to less weight
3 because it was rendered July 12, 2004, well after the final hearing
4 on December 17, 2002. (Tr. 449.) See e.g., *Weetman v. Sullivan*, 877
5 F. 2d 20, 23 (9th Cir. 1989). She notes that plaintiff admitted to
6 relapsing twice since her previous evaluation (in August of 2002)
7 by using marijuana. (Id.) Plaintiff said she had three dissociative
8 episodes in the past year, each lasting 15 to 30 minutes. (Id.)
9 Testing showed mild anxiety. (Tr. 450.) Dr. Ridgway assessed a GAF
10 of 50-55 and opined that plaintiff was unlikely able to work at that
11 time. (Id.)

12 The ALJ rejected the severity of limitations assessed by Dr.
13 Ridgway because her testing showed over-endorsement of problem
14 areas. (Tr. 19.) This is a specific and legitimate reason to reject
15 a doctor's assessed limitations.

16 The ALJ noted that a treating doctor, Susi Mulvihill, M.D.,
17 found in April of 2001 that plaintiff did not exhibit or experience
18 any significant psychological difficulties and needed only
19 medication management. (Tr. 19, citing Tr. 159-161.) Similarly, on
20 May 7, 2001, Dr. Mulivill reported that plaintiff was cooperative,
21 had an appropriate affect, normal speech, logical and goal oriented
22 thought processes, fair insight and judgment, average intellect, no
23 manic symptoms, and no significant delusions. (Id.) Physician David
24 Grubb, M.D., examined plaintiff on March 30, 2001. (Tr. 186.) He
25 assessed a GAF of 65-75, indicating mild symptoms under plaintiff's
26 present medication regimen. (Tr. 188.) Dr. Grubb opined it was not
27 clear that plaintiff needed any psychiatric treatment beyond
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1 antidepressants. (Tr. 189.)

2 The ALJ appropriately discounted Dr. Ridgway's assessed severe
3 limitations because they are inconsistent with the findings of other
4 treating and examining physicians.

5 The ALJ also relied on the opinion of the testifying medical
6 expert, Allen Bostwick, Ph.D., that plaintiff's symptoms were well
7 controlled with medication, and that the assessments of severe and
8 extreme mental health limitations were not supported by the record
9 as a whole. (Tr. 21, relying on Tr. 473-74.) Dr. Bostwick in turn
10 relied partly on the statements of Danielle Riggs, A.R.N.P., that
11 plaintiff's symptoms are relatively well-controlled with
12 psychotropic medication. (Tr. 474) (Bostwick); (Tr. 206-07;
13 275)(Riggs.)

14 The ALJ also found Dr. Ridgway's assessed severe limitations
15 inconsistent with plaintiff's activities. (Tr. 22.) For example, Dr.
16 Ridgway assessed marked social withdrawal and marked limitations in
17 the ability to perform routine tasks (Tr. 141), yet Plaintiff
18 testified that she traveled alone by Greyhound bus from Spokane to
19 Everett to care for a grandchild for a month. (Tr. 22.)

20 When weighing the evidence in a disability proceeding, case law
21 requires that the opinions of examining physicians, when
22 uncontroverted, be rejected only on the basis of clear and
23 convincing evidence. *Lester v. Chater*, 81 F. 3d 821, 830 (9th Cir.
24 1996). The opinion of a nonexamining physician cannot by itself
25 constitute substantial evidence that justifies the rejection of the
26 opinion of either an examining physician or a treating physician.
27 *Lester*, at 831 citing *Pitzer v. Sullivan*, 908 F. 2d 502, 506 n. 4

1 (9th Cir. 1990). Cases have upheld rejection of an examining or
2 treating physician's opinion based in part on the testimony of a
3 nonexamining medical advisor, but those cases have also found
4 reasons to reject the opinions of examining and treating physicians
5 that were independent of the nonexamining doctor's opinion. *Lester*,
6 at 831 citing *Magallanes v. Bowen*, 881 F. 2d 747, 751-55 (9th Cir.
7 1989) (reliance on laboratory test results, contrary reports from
8 examining physicians and testimony from claimant that conflicted
9 with treating physician's opinion); *Andrews*, 53 F. 3d at 1043
10 (conflict with opinions of five nonexamining mental health
11 professionals, testimony of claimant and medical reports); *Roberts*
12 *v. Shalala*, 66 F. 3d 179 (9th Cir. 1995) (rejection of examining
13 psychologist's functional assessment which conflicted with his own
14 written report and test results.) Thus, case law requires not only
15 an opinion from the consulting physician but also substantial
16 evidence, independent of that opinion which supports the rejection
17 of contrary conclusions by examining or treating physicians.
18 *Andrews*, 53 F. 3d at 1039.

19 If the ALJ's credibility finding is supported by substantial
20 evidence in the record, the court may not engage in second-guessing.
21 See *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F. 3d 595, 600 (9th
22 Cir. 1999).

23 Dr. Ridgways's opinions are contradicted by other treating and
24 examining physicians, and are undermined by her own testing
25 indicating over-endorsement of symptoms. Her assessed severe
26 limitations are contradicted by the testifying medical expert who
27 reviewed plaintiff's medical records. Dr. Ridgway's assessed severe
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1 limitations are contradicted by plaintiff's activities indicating
2 social and independent functioning.

3 The trier of fact, not the reviewing court, must resolve
4 conflicts in medical testimony. *Andrews v. Shalala*, 53 F. 3d 1035,
5 1039 (9th Cir. 1995). If the evidence is susceptible to more than one
6 rational interpretation, the court may not substitute its judgment
7 for that of the Commissioner. *Tackett v. Apfel*, 180 F. 3d 1094, 1097
8 (9th Cir. 1999); *Morgan v. Commissioner*, 169 F. 3d 595, 599 (9th Cir.
9 1999). The ALJ gave specific and legitimate reasons, supported by
10 substantial evidence, for rejecting Dr. Ridgway's assessed severe
11 limitations. Accordingly, the ALJ's opinion of the medical evidence
12 must be affirmed.

13 2. Determining Plaintiff's Credibility

14 Plaintiff claims that the ALJ erred by finding her less than
15 completely credible. (Ct. Rec. 10 at 18.) The Commissioner asserts
16 that the ALJ's determination is correct and his determination need
17 only be supported by substantial evidence because plaintiff's
18 repeated over-endorsing of symptoms amounts to malingering. (Ct. Rec.
19 13 at 15-16.) At oral argument the Commissioner conceded that
20 malingering as a term of art does not apply to plaintiff.

21 In *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9th Cir. 2002) the
22 court noted that when the ALJ finds the claimant's testimony as to
23 the severity of pain and impairments is unreliable, the ALJ must make
24 a credibility determination with findings sufficiently specific to
25 permit the court to conclude the ALJ did not arbitrarily discredit
26 claimant's testimony. *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th
27 Cir. 1991) (en banc). The ALJ may consider the following factors
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1 when weighing the claimant's credibility: "[claimant's] reputation
2 for truthfulness, inconsistencies either in [claimant's] testimony
3 or between [his/her] testimony and [his/her] conduct, [claimant's]
4 daily activities, [his/her] work record, and testimony from
5 physicians and third parties concerning the nature, severity, and
6 effect of the symptoms of which [claimant] complains." *Light v. Soc.*
7 *Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). If the ALJ's
8 credibility finding is supported by substantial evidence in the
9 record, the court may not engage in second-guessing. See *Morgan v.*
10 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). If
11 there is no affirmative evidence that the claimant is malingering,
12 the ALJ must provide clear and convincing reasons for rejecting the
13 claimant's testimony regarding the severity of symptoms. *Reddick*, 157
14 F.3d at 722.

15 Dr. Ridgway's test results indicated that plaintiff over-
16 endorsed her symptoms. (Tr. 292.) Dr. Bostwick opined that these
17 responses rendered the tests invalid. (Tr. 474.) The ALJ properly
18 considered the plaintiff's over-endorsement of symptoms when
19 assessing her credibility.

20 The ALJ found that plaintiff's activities do not support a
21 finding that she is severely impaired. He points to the trip that she
22 took alone by Greyhound bus from Spokane to Everett to care for a
23 grandchild for a month. He notes other similar trips and activities
24 refute plaintiff's claim that she is too psychologically impaired by
25 social withdrawal and fear of traveling alone to be able to work.
26 (Tr. 22.) An example is the July 12, 2001, notation by Jennifer
27 Beatty, M.A., that plaintiff visited her boyfriend in Louisiana and
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1 "while there problems developed." (Tr. 185.) As a result plaintiff
2 was there for an extra week and a half. (Id.) The ALJ observed that
3 many of plaintiff's mental health records show that her treatment
4 pertains largely to family and other interpersonal relationships and
5 do not support a finding that plaintiff suffers from such extreme
6 mental health limitations as described by Dr. Ridgway. (Tr. 20;
7 citing Tr. 185 and others.)

8 It is interesting with respect to the alleged severity of
9 symptoms that on March 26, 2001, plaintiff told her treatment
10 provider that she wanted to be a computer programmer. (Tr. 165.) At
11 that time plaintiff's thought processes were described as logical and
12 goal oriented. (Tr. 166.) No delusional content was noted, and her
13 judgment and impulse control "have improved." (Tr. 167.)

As noted, if the ALJ's credibility finding is supported by substantial evidence in the record, the court may not engage in second-guessing. See *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F. 3d 595, 600 (9th Cir. 1999). Because substantial evidence supports the ALJ's finding that plaintiff is less than completely credible, his assessment must be affirmed.

Conclusion

22 Having reviewed the record and the ALJ's conclusions, this Court
23 finds that substantial evidence supports the ALJ's decision that
24 plaintiff is capable of performing a wide range of medium work,
25 including her past relevant work as a cashier, and was "not disabled"
26 within the meaning of the Social Security Act.
27 Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment (Ct. Rec. 9) is **DENIED.**

2. Defendant's Motion for Summary Judgment (Ct. Rec. 12) is **GRANTED.**

3. Any application for attorney fees may be filed by separate Motion.

4. The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant and the file **CLOSED.**

DATED this 22nd day of June, 2005.

s/ Michael W. Leavitt

MICHAEL LEAVITT

UNITED STATES MAGISTRATE JUDGE